IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/12/2003

CORAM

THE HONOURABLE MR.JUSTICE A.PACKIARAJ

CRL.R.C.No.1529 of 2002

J.S.Chitharanjan .. Petitioner.

-Vs-

Dr.S.Usha Kalyani .. Respondent.

!For Petitioner : Mr.A.Raghunathan for
Mr.V.Sairam

^For Respondent : Mr.S.Ananthanarayanan

PRAYER: Revision against the order passed by the VII Metropolitan Magistrate, George Town, Madras dated 11.06.202 in Crl.M.P.No.1800 of 20 02 in C.C.No.7919 of 1998.

:O R D E R

This revision has been filed against the order passed by the VII Metropolitan Magistrate, George Town, Madras in Crl.M.P.No.1800 of 2002 in C.C.No.7919 of 1998, declining to discharge the accused/ petitioner from the private complaint preferred by the complainant/respondent of an offence under Section 500 IPC.

2. The circumstances under which the said order came to be passed is as follows:
a) The respondent/complaint is a Lecturer in English in Bharathiar College for Women, Madras and hails from a respectable family. She was married to the accused/petitioner herein and out their wedlock a female child was born, but unfortunately the marriage tie broke up and due to certain things happened in the course of their wedlock, she was forced to give a complaint against her husband for offences under Section 420 and 406 IPC. The details of which are totally not necessary for the purpose of disposing of this revision, suffice to state that the said complaint was filed before the Additional Chief Metropolitan Magistrate, Egmore, Chennai, who referred the matter to the Crime Branch, Egmore, Chennai. The Crime Branch on receipt of the same, registered a case and investigated the matter. The accused/petitioner being afraid that he may be arrested sought for Anticipatory Bail before this Court by filing an application in

Crl.O.P.No.8639 of 1998. Notice was given only to the Public Prosecutor and when the matter came up for hearing, the complainant/respondent sought to implead herself by engaging a counsel to appose the said application. The counsel for the accused/petitioner sought time and filed an affidavit of the petitioner on the next hearing in support of the application for Anticipatory Bail. In the said affidavit, the following averments have been made

"10. I state that in the month of July 1986 Usha Kalyani brought the said Abdul Razack to the house and when I suddenly went home for lunch and found the motor bike I was under the impression that my friend would have come. The door was closed and I range the bell. Since there was no power supply at that time, I went to the back yard to see if I could call Usha Kalyani. When I peeped in through the window, I saw that the said Abdul Razack having sexual intercourse with Usha Kalyani. After seeing me the said Abdul Razack fled and I had a mental shock. From that day onwards, I refused to have marital relationship with Usha Kalyani and I had to tolerate this for the sake of my daughter Ramya.

11. I further state that in furtherance to this I gathered information and found that Usha Kalyani has continued sexual relationship with many persons including Aslam and Assistant Flight person, Indian Airlines, residing at Anna Nagar and Kalyanaraman working at Bombay. I also got several information that many persons were visiting my house in my absence. When my daughter was 9 years old in the year 1992 she herself witnessed her mother in bed with a stranger and informed me about the same. When I questioned Usha Kalyani she physically assaulted my daughter and starved my daughter for two full days and I had to admit her in the hospital. Several alcohol were found in my wife's cup board and later I was informed by my daughter that Usha Kalyani has the habit of consuming alcohol regularly"

b) According to the complainant/respondent the above imputations were made in the affidavit by the accused/petitioner with the intention to harm the reputation, knowing fully well that the same is false and had been made made with the intention to malign her reputation and character. Hence, the complainant/respondent filed the present complaint before the VII Metropolitan Magistrate for the offence punishable under Section 500 IPC against the accused/petitioner.

c) On appearance the accused/petitioner filed a petition for discharge taking up a plea that the averments made in the affidavit would be protected under Exception 8 and 9 of Section 499 IPC. However, the learned Magistrate dismissed the said petition on the ground that the exceptions has to be necessarily pleaded during the course of the trial and cannot be pre-judged. It is against this order, the present revision has been filed.

3. The imputations made in the affidavit by the accused/petitioner prima facie is defamatory and there is no quarrel and rightly so no arguments were advanced in relation to that. But the learned counsel appearing for the accused/petitioner would only say that this will certainly come under Exception 8 and 9 of Section 499 IPC and hence the complaint deserves to be dismissed.

4. In support of his contention, the learned counsel first took me to Exception 8 of Section 499 IPC IPC, which reads as follows:

"It is not imputation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject of accusation."

5. Furtherance to it, Exception 9 of Section 499 IPC was also taken through by the learned counsel, which reads as follows:
"It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interest of the person making it, or for any other person, or for the public good."

6. While referring to the above stated two exceptions, the learned counsel would stress more on Exception 9 of Section 499 IPC, wherein the law says that imputation made on the character of another, if made in good faith for the protection of the interest of person making it, is not defamation. According to the learned counsel the imputation in this case was made by the accused/petitioner in the affidavit filed before the High Court to only bring it to the notice of the Court that "can the words of such a woman of bad virtues be believed and Anticipatory Bail should be rejected and that this statement would not have been made had not the defacto complainant (the present complainant) sought intervention in the bail application.

7. Just because the complainant/respondent came as an intervenor in the application preferred by the accused/petitioner seeking bail, it does not mean to say that he had a right to accuse about her moral virtues, which according to her is totally false. The accused/ petitioner cannot escape or go without being challenged claiming that it has been done in good faith and in the protection of the interest of the person making it.

8. A reading of Exception 9 of Section 499 IPC would only reveal that such an accusation is not an imputation, provided, it has been made in good faith. Here, the word provided has to be necessarily given a meaning. So, my reading of the exception clause would be to say that the imputation on the character of another is definitely a defamation, unless that imputation be proved or established that it has been made in good faith for the protection of the interest of the person making it, which means that it has to be necessarily shown in the course of trial that the imputation has been made in good faith. Therefore, I am not inclined to accept the argument of the learned counsel as far as the claiming of protection under Exception 9 of Section 499 IPC.

9. The next ground of attack is that it has been done in good faith before a lawful authority. Thus the question as to who is the lawful authority has to be decided. In the Anticipatory application, the lawful authority was the High court, but there the subject matter was only in relation to an offence under Section 406 and 420 IPC. In effect, the position is that the application before the lawful authority has been made only to grant Anticipatory Bail for the grounds raised by him and the subject matter of the present complaint, which shows the attack made on chastity and morality

is not the subject matter in the Anticipatory Bail application. Even though the defacto complainant had intervened in the said application and opposed the same, it is only with reference to the offence in that application the objection has been made. On the otherhand, if her chastity had been the subject matter before the lawful authority and if an accusation has been made in respect of that then it could very well be said that an accusation has been made before the lawful authority, who is called upon to decide that issue. But in that application there was no reason at all for him to have accused her in so many words. Therefore, here again my reading in respect of Exception 8 is that if an accusation has been made against any person, who has lawful authority means the lawful authority who is to decide that particular issue of the matter, which relates to defamatory in character and not matters incidental thereto. Therefore, what comes to be known from the above is that if something has been stated about the facts of offence under Section 406 and 420 IPC, it may well be said to be protected. But to accuse her of her morality and say that she should not be believed, is a matter which has to be necessarily tried and decided only after a full-fledged trial.

10. The learned counsel appearing for the accused/petitioner relied on a decision of the Delhi High Court reported in Pabitra Pradhan Vs. State of Orissa (2002(1) Crimes 593) wherein His Lordship Justice Agarwal has held to the effect that where it is apparent that the imputation was made in good faith by the petitioner to get the order of summoning quashing, the same cannot be said to have been made with intention or knowledge to cause harm to the reputation of petitioner. I am afraid that the said decision will not be of help to the accused/ petitioner herein, since that is a case where the allegations of the offence punishable under Section 499 IPC was made and the subject matter of the imputation was in relation to that particular offence and the Apex court was the lawful authority to decide that issue and therefore, the Delhi High Court has held that it was apparent and hence protected him under Exception 8. But in the case on hand, this Court in the Anticipatory Bail application was not called upon to decide whether she was immoral or not. The subject matter of the issue before this Court was only for an offence under Section 406 and 420 IPC, in which case the accused/petitioner has no reason to file such an affidavit.

11. The learned counsel appearing for the complainant/respondent on his side relied on a decision of the Apex Court reported in M.N. Damani Vs. S.K.Sinha and others (2001 Crl.L.N. 2571), wherein Their Lordships have held that it is not the province of this Court to appreciate at this stage the evidence or scope of and meaning of the statement. Further they went to hold that the High Court cannot at this stage say that there was no reasonable prospect of conviction resulting in case after trial and that questions whether imputations were made on good faith, in what circumstances, with what intention etc., are to be examined on the basis of the evidence in trial. I most respectfully agree with the said proposition and therefore, I have no hesitation to dismiss this revision. However, it is open for the respondent to claim the benefit of Exception 8 and 9 of Section 499 IPC as the case may be during the course of trial.

12. Apart from the above, yet another broad factor which remains to

be answered is that when the accusation has been made against the complainant in a proceedings and if it is said that it has been made in good faith without a trial after and the proceedings has been quashed, the said accusation goes unchallenged. Further, the question, will not the aggrieved person be entitled to erase the shabby comments on her. It is more in the light of this that I am not inclined to go into the factual question without a trial being proceeded to decide that it has been done in good faith. Therefore, on the above premise, I feel that there are no merits in this revision and the revision is hereby dismissed.

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Index:Yes
Internet:Yes

To

1. The VII Metropolitan Magistrate,
George Town, Chennai.

2. -Do- Thro' The Chief Metropolitan
Magistrate, Egmore, Chennai.